

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

Lead Consolidated Case No. 2:15-cv-01100-JRG-RSP

MORPHO KOMODO, LLC,

Plaintiff,

v.

BLU PRODUCTS, INC.,

Defendant.

UNOPPOSED MOTION FOR ENTRY OF AMENDED DOCKET CONTROL ORDER

Defendants BLU Products, Inc. (“BLU”), Dell Inc., (“Dell”) InfoSonics Corporation d/b/a VeryKool (“InfoSonics”) and PCS Wireless, LLC (“PCS Wireless”)¹ (collectively, “Defendants”) hereby move the Court to amend its First Amended Docket Control Order dated December 29, 2015 [Dkt. 96] (the “Docket Control Order”) to extend the deadlines to comply with P.R. 4-5(b), (c), and (d) (Responsive Claim Construction Brief, Reply Claim Construction Brief, and Joint Claim Construction Chart). All other dates in the Docket Control Order remain the same.

This extension is sought—and good cause exists—because Defendants require additional time to prepare and complete their Responsive Claim Construction Brief. Specifically, BLU has recently engaged outside patent counsel to assist its current counsel of record as it relates to claim construction briefing, and said outside counsel requires additional time to be brought up to speed with the facts of this case. An extension would cause no apparent prejudice to any party, and all claim construction briefing will still be completed two weeks before the *Markman* hearing. To this end, Defendants’ counsel contacted opposing counsel regarding the requested extension, and said requested extension is unopposed. In

¹ Defendant PCS Wireless, Inc. is an incorrectly named entity not affiliated with Defendant PCS Wireless, LLC.

sum, the relief requested in this motion is not for purposes of delay but to further the goals of the procedures of the Court and so that justice may be served.

For the foregoing reasons, Defendants respectfully request that the Court amend the Docket Control Order consistent with the deadlines proposed below along with such other and further relief as the Court deems just and proper.

| Current Deadline | New Deadline | Event |
|--------------------|--------------|--|
| November 7, 2016 | | *Jury Selection – 9:00 a.m. in Marshall, Texas before Judge Rodney Gilstrap |
| October 19, 2016 | | *Pretrial Conference – 9:00 a.m. in Marshall, Texas before Judge Roy Payne. |
| October 5, 2016 | | <p>*Notify Court of Agreements Reached During Meet and Confer</p> <p>The parties are ordered to meet and confer on any outstanding objections or motions <i>in limine</i>. The parties shall advise the Court of any agreements reached no later than 1:00 p.m. three (3) business days before the pretrial conference.</p> |
| October 3, 2016 | | *File Joint Pretrial Order, Joint Proposed Jury Instructions, Joint Proposed Verdict Form, and Responses to Motions <i>in Limine</i> |
| September 26, 2016 | | <p>*File Notice of Request for Daily Transcript or Real Time Reporting.</p> <p>If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a notice with the Court and e-mail the Court Reporter, Shelly Holmes, at shelly_holmes@txed.uscourts.gov.</p> |

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|--------------------|--|---|
| September 19, 2016 | | File Motions <i>in Limine</i> The parties shall limit their motions <i>in limine</i> to issues that if improperly introduced at trial would be so prejudicial that the Court could not alleviate the prejudice by giving appropriate instructions to the jury. |
| September 19, 2016 | | Serve Objections to Rebuttal Pretrial Disclosures |
| September 5, 2016 | | Serve Objections to Pretrial Disclosures; and Serve Rebuttal Pretrial Disclosures |
| August 29, 2016 | | Serve Pretrial Disclosures (Witness List, Deposition Designations, and Exhibit List) by the Party with the Burden of Proof |
| August 1, 2016 | | *File Dispositive Motions or Motions to Strike Expert Testimony (including <i>Daubert</i> Motions) No dispositive motion or motion to strike expert testimony (including a <i>Daubert</i> motion) may be filed after this date without leave of the Court. |
| July 25, 2016 | | Deadline to Complete Expert Discovery |
| July 11, 2016 | | Serve Disclosures for Rebuttal Expert Witnesses |
| June 20, 2016 | | Deadline to Complete Fact Discovery and File Motions to Compel Discovery |
| June 20, 2016 | | Serve Disclosures for Expert Witnesses by the Party with the Burden of Proof |
| June 7, 2016 | | Deadline to Complete Mediation The parties are responsible for ensuring that a mediation report is filed no later than 5 days after the conclusion of mediation. |
| June 6, 2016 | | *Deadline to File Letter Briefs Regarding Dispositive Motions |
| May 31, 2016 | | Comply with P.R. 3-7 (Opinion of Counsel Defenses) |

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|----------------|----------------|---|
| May 10, 2016 | | *Claim Construction Hearing – 9:00 a.m. in Marshall, Texas before Judge Roy Payne. |
| April 29, 2016 | | Deadline to Substantially Complete Document Production and Exchange Privilege Logs Counsel are expected to make good faith efforts to produce all required documents as soon as they are available and not wait until the substantial completion deadline. |
| April 26, 2016 | April 29, 2016 | *Comply with P.R. 4-5(d) (Joint Claim Construction Chart) |
| April 19, 2016 | April 26, 2016 | *Comply with P.R. 4-5(c) (Reply Claim Construction Brief) |
| April 12, 2016 | April 19, 2016 | Comply with P.R. 4-5(b) (Responsive Claim Construction Brief) |

(*) indicates a deadline that cannot be changed without showing good cause. Good cause is not shown merely by indicating that the parties agree that the deadline should be changed.

Respectfully submitted,

/s/ Isaac S. Lew

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic mail through the CM/ECF system on this 12th day of April, 2016, on all counsel of record on the service list below.

s/ Isaac S. Lew

Isaac S. Lew

CERTIFICATE OF CONFERENCE

I HEREBY CERTIFY that I have complied with the meet-and-confer requirement in Local Rule CV-7(h) by communicating with counsel for Morpho Komodo, LLC via e-mail. Accordingly, I am authorized to declare that this motion is unopposed.

s/ Isaac S. Lew

Isaac S. Lew

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